IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.510 OF 2007

Sharad Panditrao Jadhav, .. Appellant.
Vs
Chhaya Chimaso Shinde & ors .. Respondents

Mr Umesh Mankapure, for the appellant.

CORAM : D.B.BHOSALE,J.

DATED : 30th JULY, 2007

P.C.:

1. Heard the learned counsel for the appellant.

2. The plaintiff has filed this appeal challenging the concurrent findings of facts recorded by the courts below by which his suit for perpetual injunction restraining the defendants from interfering and disturbing his possession over the suit land has been dismissed. The plaintiff claims right over the suit property through his vender Ujjawala, the wife of Balasaheb. Balasaheb and Vilas are the sons of Sonabai. Sonabai is the daughter of Anjubai. Anjubai is the daughter of Maruti. Maruti and Anjubai both died intestate and after their death Sonabai became absolute owner of the suit property. The plaintiff claims that he was put in possession of the suit property by his vender Ujjawala, who executed an agreement for sale on 4.6.1992 in his favour. Mr.Mankapure, learned counsel for the appellant,

vehemently submitted that Ujjawala, being the wife of Balasaheb, had agreed to sell her exclusive share in the suit property to the plaintiff and since then he is in exclusive possession thereof. Such claim was made on the basis of the case set up by the plaintiff that the suit property was partitioned between Balasaheb and Vilas and necessary entries in the record of rights were also effected. Both the courts below, after having considered the entire evidence on record, have recorded a categoric finding that the suit land was not partitioned between Vilas and Balasaheb as claimed by the plaintiff. As a matter of fact, during the life time of Sonabai, Balasaheb and Vilas cannot claim exclusive right in the suit property. Even if it is assumed that Sonabai has no objection for Balasaheb and Vilas to be treated as exclusive owners still it cannot be overlooked that in the agreement for sale boundaries were not mentioned inasmuch as there was no partition between the two. The courts below have recorded a categoric finding that Balasaheb and Vilas were not the absolute owner of the suit land and they were in possession being the sons of Sonabai and their possession was only permissive possession. In my opinion, the findings of facts recorded by the courts below are based on the evidence on record and warrant no interference by this court in the second appeal. The second appeal is dismissed.

(D.B.BHOSALE,J.)